IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.615 OF 2007
IN
NOTICE OF MOTION NO.226 OF 2007
IN
SHORT CAUSE SUIT NO.167 OF 2007

(1) Sadhana Rana alias Sadhana Ashok Lal
(2) Aruna Vijay Bali .. Appellants
Orig.Deft.Nos.2 & 3

Versus

(1) Vidya Sinha Salunke .. Respondent
Orig.Plaintiff
(2) Rajendra Rana .. Respondent
Orig.Deft.No.1

WITH

CIVIL APPLICATION NO.869 OF 2007
IN
APPEAL FROM ORDER NO.615 OF 2007
IN
NOTICE OF MOTION NO.226 OF 2007
IN
SHORT CAUSE SUIT NO.167 OF 2007

(1) Sadhana Rana alias Sadhana Ashok Lal
(2) Aruna Vijay Bali .. Applicants
Orig.Deft.Nos.2 & 3

Versus

(1) Vidya Sinha Salunke .. Respondent
Orig.Plaintiff
(2) Rajendra Rana .. Respondent
Orig.Deft.No.1

Shri H.S.Shreepad Murthy for the Appellant
Shri Paresh Madkaikar with Ms.Raji Radhakrishnan i/b.India Law Alliance for Respondent No.1

CORAM : S.R. SATHE,J.
DATED : 21/08/2007

ORAL ORDER :-

1. By consent heard finally at admission stage.

2. The Appellant-original defendants in Short Cause Suit No.167 of 2007 have preferred this appeal against the order passed by the Judge, City Civil Court, Bombay whereby Plaintiff's Notice of Motion No.226 of 2007 was made absolute in terms of prayer (a) and defendants were directed not to create third party rights and not to alienate suit premises till the disposal of the suit. For the sake convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

3. The brief facts giving rise to this appeal from order are as under :-

Plaintiff's father Pratap Rana was film producer. He produced certain films and was financially well of. During his life time, he married thrice. From his first wife Kausalya, he had a son by name Avtar Singh. After the death of Kausalya, Pratap Rana performed married with one Rajkumari. Plaintiff is the daughter of Pratap Rana from Rajkumari. Rajkumari died

on 15/11/1947. After her death, Pratap Rana got married with Nirmaladevi. The present defendant No.1 is the son of Pratap Rana from Nirmaladevi while defendant Nos. 2 and 3 are the daughters out of the said wedlock. Nirmaladevi died on 01/11/2006.

4. According to Plaintiff, the suit property which is a flat consisting of two bedrooms, hall and kitchen situated at fourth floor in Patel Apartment, S.V. Road, Santacruz (West), Mumbai admeasuring about 1600 sq.ft. was purchased by Pratap Rana. He died intestate. So, according to Plaintiff, after the death of Pratap Rana, she being one of the heir of Pratap Rana became owner of the said property. However, she found that defendant Nos. 1 to 3 were taking steps to dispose of the suit flat and create third party interest in the same by ignoring Plaintiffs' right. She, therefore, filed Short Cause Suit No.167 of 2007 for permanent injunction restraining the defendants from dealing with, disposing off, alienating, encumbering and/or creating third party right, title and interest in the suit property and also prayed for temporary injunction by filing Notice of Motion No.226 of 2007.

5. The defendants filed their Written Statement and opposed the Plaintiffs' claim. They contended that suit flat was not the property of late Pratap Rana but on the contrary, suit property was purchased by Nirmaladevi out of her own funds and thus, she was the sole owner of the said property. According to defendants, after the death of Nirmaladevi, they have become the owners of the said property and Plaintiff is not having any right, title and interest in the said property.

6. After considering the arguments advanced by both the learned Advocates, the learned Trial Jude came to the conclusion that suit property was purchased by Pratap Rana and as he died intestate in 1976, Plaintiff is having share in the suit property. He also held that there is no evidence to show that the suit property was purchased by Nirmaladevi out of her own income. He, therefore, came to the conclusion that Plaintiff has made out a prima facie case for granting temporary injunction as prayed and therefore, passed the above mentioned order restraining the defendants from

creating third party interest in the suit property till the disposal of the suit.

7. Being aggrieved by the said order, defendants have filed the present appeal. In this appeal before me, Shri Shreepad Murthy, learned Advocate for the defendants has urged 3 points. Firstly, he submitted that the property in question is purchased by Nirmaladevi. There is nothing to show that the name of Pratap Rana was entered to the suit property and as such Plaintiff has failed to make out prima facie case. He also submitted that as per Section-15 of the Hindu Succession Act, Plaintiff being step daughter of Nirmaladevi, she would not get any interest in the property of Nirmaladevi. Secondly, he canvassed before me that in view of the provisions of Section-3 of the Prohibition of Benami Transaction Act, it must be held that the property in question was owned by Nirmaladevi as the sale deed of the said property is in her name. Lastly, he submitted that Plaintiff's brother Avtarsingh had in fact filed suit No.1 of 1978 in the High Court of Delhi for partition and separate possession against the present Plaintiff and defendants

alongwith Nirmaladevi. In that suit, the present suit property was also included. The said suit was compromised wherein it is held that the suit property is of the ownership of Nirmaladevi. He, therefore, submitted that defendants can not be restrained from alienating the suit property. As against this, Shri Paresh Madkaikar, learned Advocate for the Plaintiff supported the judgement and order passed by the learned Trial Judge. He submitted that Plaintiff is claiming right alleging that her father was the owner of the suit property. So, the question of application of Section-15 of Hindu Succession Act as tried to be argued by the learned Advocate for the defendants does not arise.

8. He also submitted that when admittedly Plaintiffs' father Pratap Rana has died intestate, it is necessary to consider after full trial of the suit as to whether the suit property is the self acquired property of Nirmaladevi as contended or whether it was the property of Pratap Rana and till the said issue is decided, it is necessary to grant temporary injunction as prayed and the balance of convenience is in favour

of the Plaintiff. He, therefore, submitted that the appeal be dismissed.

9. The relation between the parties is not in dispute. It is also an admitted fact that Pratap Rana was film producer and he died intestate. Admittedly, the suit flat is standing in the name of Pratap Rana's third wife Nirmaladevi. The main and the material question to be decided in this suit is whether the said property was purchased by Nirmaladevi out of her own income or whether the said property was in fact purchased by Pratap Rana out of his income but only in the name of his wife Nirmaladevi.

10. It was argued on behalf of the defendants that the suit property is purchased after the death of Pratap Rana. It is true that final deed is executed in the year 1983 in the name of Nirmaladevi. However, it must be noted that agreement with regard to suit property was made and consideration amount of Rs.1,00,000/- was paid in September-1975 when admittedly, Pratap Rana was alive. So, possibility of Pratap Rana purchasing the suit property out of his own

income but only in the name of his wife Nirmaladevi can not be ruled out.

11. Shri Murthi, learned Advocate for the defendants submitted that in view of the provisions of Section-3 of the Prohibition of Benami Transaction Act, it is not open for the Plaintiff to say that her father Pratap Rana purchased property in the name of his wife. It would be worthwhile to see what Section-3 says. It runs as follows :-

> ***"(1) No person shall enter into any benami transaction.***
> ***(2) Nothing in sub-section (1) shall apply to --***
>
> ***(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter."***

From the bare reading of the above provisions, it is very clear that the above mentioned presumption under section 2(a) is rebuttable. The Plaintiff has

alleged that Nirmaladevi had no independent source of income. As against this, the defendants have contended that Nirmaladevi was submitting income tax returns and she had her own source of income. However, it must be noted that the defendants have not produced on record even a single income tax return. Besides this, even if we assume that Nirmaladevi had submitted income tax returns that by itself is not sufficient to jump to the conclusion that she had in fact any independent source of income so as to purchase the suit property. The defendants have not even prima facie shown that Nirmaladevi had any such independent source of income.

12. The learned Advocate for the defendants has produced before me xerox copy of the compromise deed passed in Suit No.1 of 1978 by the Delhi High Court. That was a suit filed by Avatarsingh, son of Pratap Rana from his first wife against the present parties to the litigation for partition and separate possession of the property of Pratap Rana. In that suit, the present suit flat was also included. The present parties to the suit were defendant Nos. 2 to 6 in the said suit.

13. The compromise decree in the said suit contains following terms :-

> ***(1) That the parties in the above suit have entered into a compromise on the following terms and conditions:-***
>
> ***(i) That the suit shall be dismissed against Defendant Nos.1,2 and 4 to 6 as 'withdrawn'.***
>
> ***(ii) .....***
>
> ***(iii) .....***
>
> ***(iv) That none of the parties in the above suit shall have any right or claim whatsoever against the other, including the suit properties and all interlocutory orders shall be vacated."***

It is true that the above mentioned terms indicate that the present Plaintiffs have admitted in the said suit that the suit property is not property of Pratap Rana and probably, the other defendants may have admitted that the suit property is of defendant No.3 Nirmaladevi. However, it is very difficult to come to such conclusion particularly when it is pointed out that present Plaintiff had not actually signed the said compromise but her power of attorney who incidentally

happens to be the defendant No.1 in the present case has signed the said compromise. Still then, due weightage at this stage shall have to be given to this compromise decree.

14. From the above discussion, it is very clear that Plaintiff has prima facie proved that she is the legal heir of late Pratap Rana and she is having right, title and interest in the property held by Pratap Rana. Now the main question in this suit is to find out whether the suit flat in question was the property of Pratap Rana. Prima facie, there is no material to show that Nirmaladevi in whose name the initial agreement of suit flat is standing had any independent source of income. So, one thing is certain that Plaintiff has prima facie shown that triable issue is involved in the present suit and till that issue is decided it is necessary to protect the interest of both the parties. So, considering this aspect, I think that it is necessary to pass some such order which would ultimately, protect the interest of both the parties. It would not be proper to put harsh restrictions on the defendants and totally preclude them from doing any

transactions with regard to suit property.

15. In this view of the matter, I am of the considered view that it is necessary to set aside the order passed by the learned Judge, City Civil Court and pass a suitable modified order. Hence, I pass following order :-

O R D E R

(i) Appeal from order No.615 of 2007 and Civil Application No.869 of 2007 are partly allowed.

(ii) The order passed by the Judge, City Civil Court, Bombay restraining defendants from creating third party rights and alienating the suit premises till the disposal of the suit is set aside.

(iii) Instead, it is hereby directed that if defendants intend to alienate or create any third party interest in the suit property, while doing so, they should make it clear to such intending purchaser that their interest would be subject to the decision of Short Cause Suit No.167 of 2007 filed in the City Civil

Court of Bombay.

(iv) The Trial Court is directed to dispose of the suit as expeditiously as possible and in any event, within one year from today.

(v) Under the circumstances of the case, parties to bear their own costs of this appeal and application.

(S.R. SATHE,J.)